

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

OWEN BARTELS, JR.

§

V.

§

NO. 1:09-CV-1016

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**MICHAEL J. ASTRUE,
Commissioner of Social Security
Administration**

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**MEMORANDUM OPINION OVERRULING PLAINTIFF'S OBJECTIONS
AND ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

The court referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge submitted a report recommending that the Commissioner's motion for summary judgment be granted, the Commissioner's decision should be affirmed, and judgment entered for the Commissioner.

Plaintiff filed timely objections to the magistrate judge's Report and Recommendation. Docket No. 27. The court, therefore, conducts a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). In his objections, Mr. Bartels provides a subjective account of the physical limitations he experiences. He explains that the pain he experiences prevents him from satisfying the physical demands of his prior work as a truck driver. In effect, plaintiff asks the court to consider new evidence or reweigh existing evidence to reach a different conclusion. However, the magistrate judge correctly and clearly stated that in this type of proceeding, the court cannot consider new evidence or reweigh old evidence. So long as substantial evidence supports the Commissioner's decision and proper principles of law

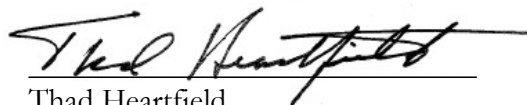
were applied, this Court must affirm. Here, the Commissioner applied correct legal principles and his decision is supported by substantial evidence. Therefore, this Court is bound to affirm the Commissioner's decision even if it could have been decided differently, notwithstanding the fact that social security claimants bear a formidable burden of proof, "so stringent that it has been described as bordering on the unrealistic." Oldham v. Schweiker, 660 F.2d 1078, 1083 (5th Cir. 1981). Consequently, after *de novo* review and careful consideration, this court concludes that plaintiff's objections are without merit.

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**, and it is

ORDERED that Defendant's motion for summary judgment (Docket No. 20) is **GRANTED**. A final judgment will be entered separately in this case in accordance with the magistrate judge's recommendation.

SIGNED this the 20 day of July, 2011.


Thad Heartfield
United States District Judge